INDEX

242-219—66——1

CITATIONS

Cases:

Cases—Continued

Statutes:

Miscellaneous:

Miscellaneous—Continued

In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 216

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

ALLIS-CHALMERS MANUFACTURING COMPANY AND INTERNATIONAL UNION, UAW-AFL-CIO (LOCALS 248 AND 401)

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The opinion of the court of appeals, sitting *en banc* (R. 96–123), is reported at 358 F. 2d 656.[1] The Board's decision and order (R. 13–24, 2–12) are reported at 149 NLRB 67.

JURISDICTION

The judgment of the court of appeals was entered on March 11, 1966 (R. 124–125). The petition for a writ of certiorari was filed on June 9, 1966, and

[1] The earlier opinion of a panel of the court, which was withdrawn, is set forth at R. 84–93.

granted on October 10, 1966 (R. 125). The jurisdiction of this Court rests on 28 U.S.C. 1254(1) and Section 10(e) of the National Labor Relations Act (29 U.S.C. 160(e)).

QUESTION PRESENTED

Whether a union which fines a member for crossing a picket line established in support of a lawful strike authorized by a majority of the union's membership, and attempts to collect such fine by court action, thereby restrains or coerces an employee in the exercise of a right guaranteed by Section 7 of the National Labor Relations Act, in violation of Section 8(b)(1)(A) of the Act.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act (61 Stat. 136, 29 U.S.C. 151, *et seq.*), in addition to those set forth in the Appendix, *infra*, pp. 39–40, are as follows:

> SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations * * * and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).
>
> SEC. 8(b). It shall be an unfair labor practice for a labor organization or its agents—
>
> (1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section

7: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein * * *.

STATEMENT

Locals 248 and 401 of the United Automobile, Aerospace and Agricultural Implement Workers of America, AFL–CIO, have, for many years, represented the production and maintenance employees of the respondent, Allis-Chalmers Manufacturing Company, at its plants in West Allis and LaCrosse, Wisconsin (R. 4–5, 14; 26).[2] The collective bargaining agreements contain a union security provision, which requires an employee to become and remain "a member of the Union * * * to the extent of paying his monthly dues and initiation fees, if any" (R. 26, 31, 34). Pursuant to this provision, all of the non-probationary employees in the bargaining units have been members of the Union at all times relevant to this proceeding (R. 5; 26, 31).

The UAW constitution provides a three-step procedure for calling a strike. First, a membership meeting of the local union is held to determine whether a formal strike vote shall be taken. Second, if a majority agrees to take a strike vote, the Local Union Executive Board notifies all the members, they are polled by secret ballot, and a strike is authorized if sanctioned by two-thirds of those voting. Third, the International Executive Board must approve the strike. (R. 38–41.) The UAW constitution further

[2] The Union intervened as a party in the court of appeals.

requires members to "support strike action" taken in accordance with the constitution (Art. 2, sec. 3; R. 35), and provides for sanctions for violation of this undertaking (see note 4, *infra*).

In 1959, and again in 1962, the Union called an economic strike against the Company in furtherance of new contract demands, and established picket lines in front of the Company's plants. Each strike was called in accordance with the foregoing procedure (R. 97, fn. *; 72–73). Although most of the employees in the bargaining unit joined the strikes and refused to cross the picket line, some ignored the line and went to work (R. 5–7, 14–15; 27, 29, 31, 32).[3]

After each strike, the Union charged the members who had crossed the picket line with violating the UAW constitution and bylaws, and, after formal adversary hearings before Union trial boards, found that they had engaged in "conduct unbecoming a Union member" and fined them in amounts varying from $20 to $100 (R. 5–7, 14–15; 27–30, 31–32, 42–54, 80–88).[4] Some of the members paid the fines in

---

[3] In the 1959 strike, 175 employees out of a unit of 7,400 went to work at West Allis, and 2 employees went to work at La Crosse. In the 1962 strike, 30 out of a unit of 5,500 went to work at West Allis, and 4 out of 625 went to work at La Crosse (R. 14–15; 27, 29, 31, 32).

[4] The UAW constitution (Art. 30, Sec. 10; R. 87) provides that, if a member is found to have violated the union's rules:

> * * * the Trial Committee may, by a majority vote, reprimand the accused; or it may, by a two-thirds (⅔) vote, assess a fine not to exceed one hundred dollars ($100) with automatic suspension, removal from office or expulsion in the event of the failure of the accused to pay the fine within a specified time; or it may, by a two-thirds (⅔) vote, suspend or remove the accused from office or

whole or in part but others refused to pay (R. 7; 30, 33). The Union commenced actions to collect the fines in the Wisconsin courts (R. 6–7; 28–29, 31).[5] It made no effort to procure the discharge, or otherwise affect the employment status, of members who refused to pay the fines. None of the offending members has been expelled or suspended from the Union, nor have any resigned, for any reason relating to the disciplinary proceedings. (R. 7–8, 15; 30, 32.)

The Company filed charges with the Board alleging that the Union's assessment and attempted collection of the fines constituted restraint and coercion of the employees in the exercise of their right to refrain from participation in union activities, in violation of Section 8(b)(1)(A) of the National Labor Relations Act (R. 3–4). The Board (with Member Leedom dissenting) held that the conduct complained of did not violate that Section, and dismissed the complaint issued by the General Counsel (R. 13–24).

The Company petitioned the court below to review the Board's dismissal order. A panel of the court (Judges Kiley, Knoch and Castle) upheld the Board's decision (R. 84–93). Following a rehearing *en banc*, the court (with Chief Judge Hastings, and Judges Kiley and Swygert dissenting) withdrew its earlier opinion and held that the Union's action violated Sec-

---

suspend or expel him from membership in the International Union.

[5] In a test suit brought against one member who refused to pay a fine, the Union obtained a judgment in the County Court of Milwaukee County, Wisconsin, which the Circuit Court of Milwaukee County affirmed. The opinion of the Circuit Court is set forth in Appendix B, *infra*. The case is pending before the Wisconsin Supreme Court. (R. 6–7.)

tion 8(b)(1)(A) of the Act (R. 96–123). The court accordingly set aside the Board's order dismissing the complaint, and remanded the case to the Board for further proceedings (R. 103).

ARGUMENT

I. INTRODUCTION AND SUMMARY

Section 8(b)(1)(A) of the National Labor Relations Act makes it an unfair labor practice for a union to "restrain or coerce" employees in the exercise of rights guaranteed by Section 7. Section 7 in turn guarantees to employees both the right to form, join or assist labor organizations and "the right to refrain from any or all such activities." A proviso to Section 8(b)(1)(A) preserves the right of a union "to prescribe its own rules with respect to the acquisition or retention of membership therein."

The court below held that it is an unfair labor practice under Section 8(b)(1)(A) for a union to fine members for crossing the union's picket line during a strike and to attempt to recover such fines by court action. The court reached that conclusion although, so far as appears from the record, (1) the strike was lawful and was duly authorized by a majority of the union's members;* (2) each of the members who were fined had sworn to comply with the rules and regulations of the union (R. 38, 59, 61) and thus "to support strike action" (R. 35); and (3) no defect in the union

* The suggestion in the Company's Brief in Opposition (pp. 3, 7) that there was some unspecified impropriety in the procedure by which the strikes were called has no basis in the record and was rejected by the court of appeals (R. 97, fn.*).

procedures leading to the imposition of the fines was alleged. The court below proceeded on the premise that "[t]he statutes in question present no ambiguities whatsoever" and that "a literal reading would require reversal of the Board's Order" dismissing the complaint (R. 101). Yet, as Judge Learned Hand taught long ago, "[t]here is no surer way to misread any document than to read it literally." *Guiseppi* v. *Walling*, 144 F. 2d 608, 624 (C.A. 2) (concurring opinion), affirmed *sub nom. Gemsco* v. *Walling*, 324 U.S. 244. Given the complex legislative and judicial history of the act in question, such literalism seems a peculiarly blunt tool.

The legislative history is considered in detail below (*infra* pp. 15–29). In the first instance, however, it should be noted that the decision below represents a sharp break with the common understanding of the Board and the courts as to the legitimate scope of union disciplinary powers. From the outset the Board has held that Section 8(b)(1)(A) does not prohibit union disciplinary sanctions that are neither tinged with violence nor directed at employment status and which seek to compel union members to comply with reasonable and legitimate union policies. *Minneapolis Star and Tribune Co.*, 109 NLRB 727, 738; *Int'l Typographical Union (American Newspaper Publishers Ass'n)*, 86 NLRB 951, 956–957, 1022–1023.[7] That interpretation, articulated

[7] See also *Local 283, Auto Workers (Wisconsin Motor Corp.)*, 145 NLRB 1097; *Bay Counties District Council of Carpenters (Associated Home Builders)*, 145 NLRB 1775, remanded for further proceedings, 352 F. 2d 745 (C.A. 9); *United Steelworkers, Local No. 4028 (Pittsburgh-Des Moines Steel Co.)*, 154 NLRB

shortly after the passage of the Taft-Hartley Act, is entitled to substantial weight because it constitutes "a contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in motion, of making the parts work efficiently and smoothly while they are yet untried and new." *Norwegian Nitrogen Products Co.* v. *United States*, 288 U.S. 294, 315.[8] The courts likewise have heretofore found no statutory bar to the use of legitimate sanctions in the enforcement of reasonable union rules. *National Labor Relations Board* v. *Amalgamated Local 286*, 222 F. 2d 95 (C.A. 7); *American Newspaper Publishers Ass'n* v. *National Labor Relations Board*, 193 F. 2d 782, 800 (C.A. 7); *Parks* v. *I.B.E.W.*, 314 F. 2d 886 (C.A. 4), certiorari denied, 372 U.S. 976; *National Labor Relations Board* v. *UAW*, 320 F. 2d 12 (C.A. 1); cf. *Machinists* v. *Gonzales*, 356 U.S. 617, 620.

---

692. Cf. *Local 138, Operating Engineers (Charles S. Skura)*, 148 NLRB 679; *H. B. Roberts, Business Manager of Local 925, Operating Engineers (Wellman-Lord Engineering, Inc.)*, 148 NLRB 674, enforced *sub nom. Roberts* v. *National Labor Relations Board*, 350 F. 2d 427 (C.A.D.C.); *Cannery Workers Union (Van Camp Seafood Co.)*, 159 NLRB No. 47.

[8] To be sure, the Board has recognized that "a fine is by nature coercive". *Local 138, Operating Engineers*, 148 NLRB 679, 682. The Board has held that the use of such coercive power to secure the compliance of members with rules outside the union's competence violates Section 8(b)(1)(A). *Ibid*; see n. 24, p. 33, *infra*. Moreover, a fine may not be collected by applying union dues collected under a union security agreement and thereafter threatening job loss for nonpayment of dues, since Section 8(b)(2) makes it quite clear that employment status must not be used as a means of enforcing union discipline. See *infra*, pp. 16–27, and *Associated Home Builders of the Greater East Bay*, 145 NLRB 1775, 1776, remanded, 352 F. 2d 745.

While we recognize that the scope of permissible union action under Section 8(b)(1)(A) is subject to continuing judicial reexamination, at least at its periphery,[8] we deal here with a rule going to the heart of a union's being. As the Board observed (R. 16): "We cannot conceive of a subject which would be more within its competence" than "a rule prohibiting members from crossing a picket line," for such a rule "involves the loyalty of its members during a time of crisis for the union." And in fact rules requiring membership loyalty under such circumstances are to be found in the constitutions of a very large number of unions. See United States Bureau of Labor Statistics, Department of Labor, Bulletin No. 1350, *Disciplinary Powers and Procedures in Union Constitutions* 28, Table III–3 (1963); Summers, *Legal Limitations on Union Discipline,* 64 Harv. L. Rev. 1049, 1066 (1951). In short, one must approach the decision below with the recognition that it proscribes a widespread, if not universal, practice of unions which has been sanctioned by the courts and the Board over a long period of time.

Furthermore, in assessing the result reached below, it is relevant to consider its practical significance for responsible, democratic and effective unionism and, hence, for the functioning of the entire structure of collective bargaining established under federal labor law. There can be no doubt that the Taft-Hartley

---

[8] Compare *Local No. 12, United Rubber Workers* v. *National Labor Relations Board* (C.A. 5), decided November 9, 1966, 63 LRRM 2395, with *National Labor Relations Board* v. *Miranda Fuel Co.*, 326 F. 2d (C.A. 2). See also brief for the United States as *Amicus Curiae* in *Vaca* v. *Sipes*, No. 114, this Term.

Act was designed to improve and not to abolish the union's role in effectuating the congressional program for the promotion of "industrial stabilization through the collective bargaining agreement." *United Steelworkers* v. *Warrior & Gulf Navigation Co.*, 363 U.S. 574, 578. While seeking to restrain a variety of union abuses, the Act preserved the right of employees "to self-organization, * * * to bargain collectively through representatives of their own choosing, and to engage in other concerted activities * * *" (Section 7). The unions established through the exercise of those rights bear substantial statutory and contractual responsibilities, not only to their members, but to non-member employees within the bargaining unit and to employers as well. Moreover, a properly selected bargaining agent has significant powers, commensurate with its responsibilities. See *Humphrey* v. *Moore*, 375 U.S. 335, 342, 349; *Mastro Plastics Corp.* v. *National Labor Relations Board*, 350 U.S. 270, 280.

Implicit in these processes of industrial self-government, as in other forms of concerted, associational activity, is the principle of majority rule. As this Court has recognized, "[c]onflict between employees represented by the same union is a recurring fact" (*Humphrey* v. *Moore*, 375 U.S. at 349-350); "[t]he complete satisfaction of all who are represented is hardly to be expected". (*Ford Motor Co.* v. *Huffman*, 345 U.S. 330, 338). That the majority choice should prevail, within the area of union competence, is both the source of the union's legitimacy and the only democratic method of achieving effective concerted action. The elaborate, time consuming and expensive procedures for balloting on a wide variety

of union matters would be remarkably pointless if Section 7 left each participant free to disregard the outcome. Cf. *Brooks* v. *National Labor Relations Board,* 348 U.S. 96; National Labor Relations Act Section 9(c)(3), 29 U.S.C. 159(c)(3). In selecting the bargaining agent, in electing officers, in approving bargaining agreements, all are bound by the majority decision. The important rights to self-organization and concerted action would be largely meaningless on any other terms. On its face, therefore, it seems inherently implausible that, in giving statutory recognition to an employee's right to refrain from engaging in concerted activity, Congress intended to proscribe the principle of majority rule for labor unions. Yet that is the practical effect of the decision below, since it holds that adherence to the majority decision may not be required.

A much more plausible interpretation of the statutory language was vigorously urged by the dissenting judges below (R. 104–123). Section 7 may properly be read to give each employee a free choice: He may elect to abstain from union affairs, in which case his only obligation under a union security clause is to pay union dues and fees. See *National Labor Relations Board* v. *General Motors Corp.,* 373 U.S. 734. Alternatively, he may elect to participate in concerted union activities, in which case he assumes the benefits and burdens such participation reasonably entails. But Section 7 affords no right to do both at once. See *National Labor Relations Board* v. *UAW,* 320 F. 2d 12 (C.A. 1). As Chief Judge Hastings wrote in dissent (R. 105), Section 7 does not provide that "*an employee*

who is a union member may claim the * * * right of self-organization for collective bargaining purposes and at the same time claim the right to belong to the labor organization on his own terms" (emphasis in original). Section 7 protects a free choice; it does not withhold the consequences of choosing. Nothing in the Act or the legislative history requires the conclusion that Congress intended to steer a self-defeating course.

Finally, the court below reached this anomalous result not in some area of minor or peripheral concern, but with respect to a strike vote. There can be no doubt that the strike, or the threat of strike, is a union's ultimate weapon and the principal source of its bargaining power. Furthermore, in no other area of union concern is concerted action—*i.e.*, united action—more significant. One man cannot strike; only groups of men united for action can strike in any meaningful sense. The union member who works while his fellow members are on strike commits the gravest offense against his union. Since union members are no more likely to be unanimous in their views of the wisdom of a strike than in other matters, it seems reasonable that they may agree in advance to abide by the majority vote and to the imposition of sanctions for non-compliance. Indeed, the capacity to so agree would appear to be essential to the right to strike, for it seems inconceivable that a union may conduct a strike only as and when each individual member chooses to participate. Yet the decision below holds that the right under Section 7 either to engage in or refrain from concerted activities unambiguously proscribes a union from insisting that its

members comply with a strike vote. The result is inconsistent with the settled rule that, when a union decides not to strike or enters into a no-strike agreement, a dissident minority is not free by virtue of its Section 7 rights to ignore that decision and strike on its own. *National Labor Relations Board* v. *Draper Corp.*, 145 F. 2d 199 (C.A. 4); *Parks* v. *I.B.E.W.*, 314 F. 2d 886 (C.A. 4), certiorari denied, 372 U.S. 976; cf. *National Labor Relations Board* v. *Sands Mfg. Co.*, 306 U.S. 332. "Disciplining wildcat strikers may not only be a power but a positive duty of the union." Summers, *Legal Limitations on Union Discipline*, 64 Harv. L. Rev. 1049, 1065 (1951).

The court of appeals did not even advert to Section 13 of the Act which provides that nothing therein "except as specifically provided for * * * shall be construed so as either to interfere with or impede or diminish in any way the right to strike * * * ." This Court has characterized Section 13 as a "command of Congress to the courts to resolve doubts and ambiguities in favor of an interpretation of § 8 (b)(1)(A) which safeguards the right to strike as understood prior to the passage of the Taft-Hartley Act." *National Labor Relations Board* v. *Drivers Local 639* (*Curtis Bros.*), 362 U.S. at 274, 282. This command the court of appeals failed to heed.

We show below (*infra*, pp. 15–27) that the legislative history of the Taft-Hartley Act discloses no congressional purpose to prohibit unions from disciplining members by such means as fines, suspension or expulsion for violating reasonable union rules. On the contrary, that history indicates that Congress was

primarily concerned with a limited class of coercive union practices—notably, violence and threats of job loss—and that it had no intention to intrude on the maintenance of internal union discipline by legitimate means in support of legitimate union objectives, especially in light of the prohibition of the closed shop and the compulsory unionism it had entailed. We also show (*infra*, pp. 28–29) that this understanding of the congressional purpose is supported by its rational consistency with the Labor-Management Reporting and Disclosure Act of 1959. Although the 1959 statute, unlike the Taft-Hartley Act, was expressly directed at the protection of the union members in the internal procedures of their unions, it explicitly recognized that a union member may be fined under proper procedural safeguards (Section 101(a)(5), 29 U.S.C. 411(a)(5)). Moreover, it disclaimed any intent "* * * to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution * * *" (Section 101(a)(2), 29 U.S.C. 411(a)(2)).

Furthermore, we point out (*infra*, pp. 29–35) that a fine, fairly imposed and collected through judicial proceedings, is not an impermissible sanction under Section 8(b)(1)(A), and that securing membership compliance with a strike is not an impermissible objective. Some fines—*e.g.* those imposed on wildcat strikers—are clearly proper, if indeed not required. Resort to court action to collect a fairly imposed fine is the very antithesis of strong-arm tactics and similar methods that Congress sought

to proscribe. Moreover, the fines involved here were imposed for violation of a voluntarily assumed duty of union members who had sworn to comply with union rules and to support lawful strike action. Finally, we urge (*infra*, pp. 35–38) that the Union's action did not violate Section 8(b)(1)(A) because no right protected by Section 7 was involved. Having voluntarily undertaken the burden and benefits of participation in the affairs of the union, the members had exercised their Section 7 right to engage in concerted activities and could not simultaneously claim a protected right to refrain from such participation.

II. CONGRESS DID NOT INTEND TO PROHIBIT UNIONS FROM DISCIPLINING UNION MEMBERS BY SUCH MEANS AS FINES, SUSPENSION OR EXPULSION FOR VIOLATING REASONABLE UNION RULES

Since a union's imposition, and attempted collection by court action, of a fine for failure to adhere to a union policy tend, in a literal sense, to restrain or coerce union members (who are also employees) to assist the union, the court below concluded that such action was proscribed by Section 8(b)(1)(A). But *National Labor Relations Board* v. *Drivers Local No. 639* (*Curtis Bros.*), 362 U.S. 274, teaches that Section 8(b)(1)(A) cannot be read literally to cover all union action which tends to restrain or coerce employees in the exercise of their Section 7 rights.[10]

[10] In *Curtis*, the Court held that Section 8(b)(1)(A) did not reach peaceful picketing by a minority union to secure exclusive recognition, notwithstanding that such picketing tended, in a literal sense, to restrain or coerce the employees to forgo their Section 7 right to refrain from selecting a union representative.

Curtis also cautions against "finding by construction a broad policy" in what the Court termed "the non-specific, indeed vague, words, 'restrain or coerce'" (*id.* at 290). The legislative history of Section 8(b)(1)(A), read in the context of the contemporaneous and subsequent amendments to the labor law, reveals no congressional purpose which would support the broad and novel construction reached by the court below. On the contrary, we show that the legislative history of the Taft-Hartley Act and the 1959 amendments reveal that Congress did not intend to preclude a union from disciplining its members—by such traditional means as fines, suspension, or expulsion—for violating reasonable union rules and policies.

A. IN AMENDING THE UNION SECURITY PROVISO TO SECTION 8(a)(3) AND ADDING THE SECTION 8(b)(2) BAN AGAINST UNION DISCRIMINATION, CONGRESS PROSCRIBED COMPULSORY UNIONISM AND DREW A CAREFUL LINE BETWEEN UNION DISCIPLINE WHICH AFFECTED A MEMBER'S JOB RIGHTS AND THAT WHICH DID NOT

The 1947 Taft-Hartley Act is essentially the Senate bill (S. 1126), which Senators Taft and Ball sponsored. The bill as reported by the Senate Labor Committee did not contain Section 8(b)(1)(A), which was added on the floor of the Senate. The Committee bill did, however, amend the proviso to Section 8(a)(3) so as to outlaw the closed shop, and added Section 8(b)(2), which made it unlawful for a union to discriminate or to cause discrimination against an employee (these provisions are set forth in the Appendix, *infra,* pp. 39–40, and are discussed more fully below). Since the debate on these changes involved a discussion of union discipline, and since it occurred while

Congress was considering Section 8(b)(1)(A),[11] such debate sheds helpful light on the intended scope of Section 8(b)(1)(A).

In amending Section 8(a)(3) so as to outlaw agreements conditioning employment on union membership (the closed shop) while permitting agreements under which employees were required to become and remain members of the union after a 30-day period (the union shop), Congress provided:

> That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership.

As a corollary, Section 8(b)(2) made it an unfair labor practice for a union "to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) or to discriminate against an employee with respect to whom membership

---

[11] Section 8(b)(1)(A) was introduced on the floor of the Senate on April 25, 1947, and was discussed that day. On April 29, the union shop and Section 8(b)(2) amendments were discussed. On April 30, the discussion of Section 8(b)(1)(A) resumed and continued until May 2, when the Senate adopted the provision. 93 Cong. Rec. 4016, 4191, 4270, 4442; 2 Leg. Hist. 1018, 1094, 1138, 1217.

"Leg. Hist." refers to the two-volume Legislative History of the Labor Management Relations Act, 1947. (G.P.O., 1948).

in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership."

Respecting these amendments, the Senate Report stated (S. Rep. No. 105, 80th Cong., 1st Sess. 20, 1 Leg. Hist. 426, emphasis added):

> The committee did not desire to limit the labor organization with respect to either its selection of membership or expulsion therefrom. But the committee did wish *to protect the employee in his job* if unreasonably expelled or denied membership. The tests provided by the amendment are based upon facts readily ascertainable and *do not require the employer to inquire into the internal affairs of the union.*

The report added (S. Rep. No. 105, *op. cit.*, 21, 1 Leg. Hist. 427, emphasis added):

> It is to be observed that unions are free to adopt whatever membership provisions they desire, but that they may not rely upon action taken pursuant to those provisions *in effecting the discharge of, or other job discrimination against,* an employee except in the two situations described. Thus, an employee even though he loses his union membership for reasons other than those set forth, may not be deprived of his job because of a contract requiring membership as a condition of employment. Discrimination is permitted only if he has failed to tender dues and initiation fees * * *.[12]

[12] The Senate bill also provided that the employee could be discharged if he "has engaged in 'dual union' activity or activity designed to oust the incumbent union as exclusive representative,

On the floor of the Senate, Senator Pepper protested that these amendments would deprive the union of power to protect itself against company spies in its ranks, wildcat strikers, and those who opposed what the majority of the members believed was in the union's best interest (93 Cong. Rec. 4191, 2 Leg. Hist. 1094). He added (93 Cong. Rec. 4193, 2 Leg. Hist. 1097):

> * * * we do not have to intervene, by means of this legislation, into this internal affair of a union and deny it the right to protect itself against a man in the union who betrays the objectives of the union, who violates, perhaps, the constitution of the union or the bylaws of the union, and is convicted by his peers and fellow members of having an antiunion and antisocial attitude toward the workers in that organization.

Senator Taft answered (*ibid.*, emphasis added):

> The pending measure *does not propose any limitation with respect to the internal affairs of unions.* They still will be able to fire any members they wish to fire, and they still will be able to try any of their members. All that they will not be able to do, after the enactment of this bill, is this: If they fire a member for some reason other than nonpayment of dues they cannot make his employer discharge him from his job and throw him out of work. That

---

at an inappropriate time." S. Rep. No. 105, *op. cit.*, 21, 1 Leg. Hist. 427. This provision was omitted in Conference on the ground that it was "unnecessary since there is nothing in the conference agreement which permits an employer to discriminate against an employee who has been expelled for this reason." H. Conf. Rep. No. 510, 80th Cong., 1st Sess. 44, 1 Leg. Hist. 548.

is the only result of the provision under discussion.

In sum, in abolishing the closed shop and in making it an unfair labor practice for a union, no less than an employer, to discriminate against an employee so as to encourage or discourage union membership, Congress indicated that its policy was "to insulate employees' jobs from their organizational rights" (*Radio Officers' Union* v. *National Labor Relations Board,* 347 U.S. 17, 40). That is, impressed with the argument that employees were not entitled to be "free riders," it permitted union security agreements and provided that thereunder the union could cause an employee to be fired for failure to pay regular dues and initiation fees; but it permitted no other union rule or membership obligation to be enforced by means that affect the employee's employment status. At the same time, Congress refrained from precluding the union from enforcing such rules or membership obligations by other means which did not affect job rights.[13] Fur-

[13] A study of union disciplinary powers and procedures published shortly after the enactment of the Taft-Hartley Act found that:

> Two-thirds of the unions have provisions exercising some degree of discipline over a member's conduct on the job: 59 prohibit working on a job while a strike is in progress; 31 punish work stoppages in violation of agreement; 15 bar the making of individual contracts with the employer; and 11 prohibit members from working with nonmembers. * * * [Summers, *Disciplinary Powers of Unions*, 3 Ind. Lab. Rel. Rev. 483, 495 (1950).]

The three typical sanctions for enforcing such rules were fines, suspension for a limited period, and expulsion from membership; and "the most common form of penalty is the fine." Summers, *Disciplinary Procedures of Unions*, 4 Ind. Lab. Rel. Rev. 15, 26 (1950).

thermore, since under Section 8(a)(3) "'[m]embership' as a condition of employment is whittled down to its financial core" (*National Labor Relations Board* v. *General Motors Corp.*, 373 U.S. 734, 742), the assumption of any burdens or obligations of union membership beyond the payment of dues and fees becomes an essentially voluntary matter for each employee. Section 8(b)(1)(A) must be interpreted in light of the elimination of all compulsion to join unions except to the extent of paying dues and fees.

B. SECTION 8(b)(1)(A) WAS AIMED PRIMARILY AT VIOLENCE AND THREATS OF JOB LOSS, PRINCIPALLY IN ORGANIZING CAMPAIGNS

It is not reasonable to assume that Congress, after carefully avoiding, in amending Section 8(a)(3) and adding Section 8(b)(2), limitations on a union's efforts to discipline its members by means that do not affect job rights, made a sweeping departure from that principle in enacting Section 8(b)(1)(A)—a provision which was considered in the midst of the debate on the 8(a)(3) and 8(b)(2) amendments (see n. 11, *supra*, p. 17). The legislative history of Section 8(b)(1)(A) suggests that there was no such intention, that Congress was directing its attention to a relatively limited class of abuses, and that it had no general intent to deprive the union of power to discipline its members for violating reasonable union rules and policies by such traditional means as fines, suspension, or expulsion.

Thus, five members of the Senate Committee, including Senators Taft and Ball, criticized the omis-

sion from the Senate bill of a provision dealing with certain coercive union practices. They stated (S. Rep. No. 105, Supplemental Views, 80th Cong., 1st Sess. 50, 1 Leg. Hist. 456):

> The committee heard many instances of union coercion of employees such as that brought about by threats of reprisal against employees and their families in the course of organizing campaigns; also direct interference by mass picketing and other violence. Some of these acts are illegal under State law, but we see no reason why they should not also constitute unfair labor practices to be investigated by the National Labor Relations Board, and at least deprive the violators of any protection furnished by the Wagner Act. * * *

When Section 8(b)(1)(A) was later introduced on the floor of the Senate, Senator Taft explained (93 Cong. Rec. 4021, 2 Leg. Hist. 1025):

> An employer cannot go to an employee and say, "If you join this union you will be discharged." He cannot go to an employee and threaten physical violence. * * * Now it is proposed that the union be bound in the same way. * * * Why should a union be able to go to an employee and threaten violence if he does not join the union? Why should a union be able to say to an employee, "If you do not join this union we will see that you cannot work in the plant"? * * * There have been many cases in which unions have threatened men or their wives. They have called on them on the telephone and insisted that they sign bargaining cards. They have said to them, "Sooner

> or later we are going to organize this plant with a closed shop, and you will be out" * * * [14]

Senator Ives inquired whether the provisions in the bill "pertaining to the union shop and the regulation and control of employment under the union shop" would not check these practices (93 Cong. Rec. 4021, 2 Leg. Hist. 1025). Senator Taft replied that those provisions were not adequate since many unions did not have union security agreements and in many cases the union coercion occurred before a representative was even selected (93 Cong. Rec. 4021, 2 Leg. Hist. 1025–1026).

The debate on Section 8(b)(1)(A) was then suspended for several days, while the union shop amendment and Section 8(b)(2), *inter alia*, were discussed (see pp. 16–21, *supra*). When the Senate returned to Section 8(b)(1)(A), Senator Holland proposed that a proviso be added to Section 8(b)(1)(A), reading (93 Cong. Rec. 4272, 2 Leg. Hist. 1141):

> *Provided*, That this subsection shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein.

Senator Ball readily accepted it, stating (*ibid.*):

> It was never the intention of the sponsors of the pending amendment to interfere with the internal affairs or organization of unions. The amendment of the Senator from Florida makes that perfectly clear. * * *

---

[14] See also 93 Cong. Rec. 4016–4017, 2 Leg. Hist. 1018–1021 (Senator Ball).

Senator Morse thereupon attacked Section 8(b)(1)(A) on the ground that, insofar as it was directed at violence and related conduct, local laws were sufficient to deal with such conduct; and, insofar as it was directed against union threats of economic reprisal, the union shop and union discrimination amendments would take care of the problem. He added that the provision would have the effect of outlawing organizational and recognitional strikes. 93 Cong. Rec. 4428–4431, 2 Leg. Hist. 1191–1197.

Senator Ball, referring to the proviso, which had just been adopted, stated (93 Cong. Rec. 4433, 2 Leg. Hist. 1200):

> That modification is designed to make it clear that we are not trying to interfere with the internal affairs of a union which is already organized. All we are trying to cover is the coercive and restraining acts of the union in its effort to organize unorganized employees. * * *

He added (93 Cong. Rec. 4434, 2 Leg. Hist. 1202):

> What we are talking about is threats of violence or of reprisal and that sort of thing in an organizational campaign, or perhaps in an organizational strike * * *. A mass picket line certainly would be coercion and restraint in this picture.

Similarly, Senator Taft asserted that there was no intention to interfere with peaceful picketing or other legitimate organizing activity. 93 Cong. Rec. 4436–4437, 2 Leg. Hist. 1206–1208. He gave the following illustrations of the type of conduct sought to be reached under Section 8(b)(1)(A) (93 Cong. Rec. 4435–4436, 2 Leg. Hist. 1205):

> In the case of unions, in the first place, there might be a threat that if a man did not join, the union would raise the initiation fee to $300, and he would have to pay $300 to get in; or there might be a threat that if he did not join, the union would get a closed-shop agreement and keep him from working at all. Then, there might be a threat of beating up his family or himself if he did not join and sign a card. I think * * * there might be the actually violent act of forcibly, by mass picketing, preventing a man from working.

In short, as this Court pointed out in *Curtis, supra,* the "note repeatedly sounded" by Congress, in enacting Section 8(b)(1)(A), was "the necessity for protecting individual workers from union organizational tactics tinged with violence, duress or reprisal" (362 U.S. at 286).[15] To be sure, Congress also intended to pro-

[15] The threats of reprisal which Congress sought to prohibit included "particularized threats of economic reprisal" (*Curtis, supra,* 362 U.S. at 287). However, the examples given make it clear that the legislators were referring principally to threats of job loss or other adverse effects on employment status. See *e.g.*, 93 Cong. Rec. 4021, 4024, 4435–4436; 2 Leg. Hist. 1025, 1031, 1205–1206 (Senator Taft). It is not readily to be supposed that the familiar "fine," though never mentioned, was implied by the phrase "economical reprisal."

We recognize that Section 8(b)(1)(A) has also been held to prohibit other forms of non-violent union action. See *Ladies' Garment Workers' Union* v. *National Labor Relations Board*, 366 U.S. 731 (union violated Section 8(b)(1)(A) by entering into an exclusive recognition agreement with the employer at a time when it represented only a minority of the employees); *Local Union No. 12, United Rubber Workers* v. *National Labor Relations Board* (C.A. 5), decided November 9, 1966, 63 LRRM 2395 (union violated Section 8(b)(1)(A) by refusing to process grievances because of the employees' race); *Roberts* v. *National Labor Relations*

scribe violence, mass picketing, and threats of job loss even when they were engaged in outside of an organizing campaign and were directed against employees who were already union members. However, there is no persuasive evidence that Congress intended to regulate the relationship between the union and its members so as to bar the union from disciplining its members, by such traditional and peaceful means as fines, suspension, or expulsion, for violating reasonable union rules and policies.[16] On the contrary, in

Board, 350 F. 2d 427 (C.A.D.C.) (union violated Section 8(b)(1)(A) by fining a member for filing unfair labor practice charges with the Board, discussed *infra*, n. 25, p. 33). But, in each of these cases, the union's conduct was found illegal because it went beyond the area of legitimate union competence. These cases hold that otherwise legitimate means may be deemed violations of Section 8(b)(1)(A) when infected by ends that lie beyond the pale of legitimate union objectives. See Cox, *The Role of Law in Preserving Union Democracy*, 72 Harv. L. Rev. 609, 617 (1959). The prevention of strike-breaking by union members who have sworn to support strike activity clearly does not fall in the class of forbidden objectives. See, *infra*, pp. 33–37.

[16] When Section 8(b)(1)(A) was first introduced, Senator Taft, in response to Senator Pepper's contention that the relation between a union and its members was different from that of an employer and his employees, asserted that the provision was intended to protect union members against the arbitrary powers exercised by some union leaders. 93 Cong. Rec. 4023, 2 Leg. Hist. 1027–1028. However, when Senator Pepper continued to press the point, Senator Taft shifted ground and emphasized that "the amendment protects men who may not be members of unions at all." He proceeded to give examples of threats of job loss and of physical violence. 93 Cong. Rec. 4023–4024, 2 Leg. Hist. 1028–1031. Senator Taft did not thereafter again suggest that Section 8(b)(1)(A) was intended to govern the relation between the union and its members. Indeed, in the debate on the union shop and Section 8(b)

adopting the proviso to Section 8(b)(1)(A) and the union shop and Section 8(b)(2) amendments, Congress made it clear that it had no such intention.[17]

---

(2) amendments, which followed the above colloquy with Senator Pepper, Senator Taft gave specific assurance that the bill "does not propose any limitation with respect to the internal affairs of unions" (*supra*, p. 19). Moreover, the proviso to Section 8(b)(1)(A) (*supra*, p. 23) was adopted after the Pepper-Taft colloquy.

The statement of Senator Wiley—that there are "instances in which unions * * * have imposed fines upon their members up to $20,000 because they crossed picket lines—dared to go to the place of employment" (93 Cong. Rec. 5000, 2 Leg. Hist. 1471)—likewise does not establish that, under Section 8(b)(1)(A), Congress intended to bar the union from fining its members for breach of reasonable union rules. Senator Wiley was not one of the sponsors of Section 8(b)(1)(A), his remarks occurred after Section 8(b)(1)(A) had been debated and adopted, and they were not even specifically directed to that provision.

Finally, Senator Taft explained that the right to refrain was added to Section 7 to "make the prohibition contained in section 8(b)(1) apply to coercive acts of unions against employees who did not wish to join or did not care to participate in a strike or a picket line" (93 Cong. Rec. 6859, 2 Leg. Hist. 1623). However, there is nothing in this statement which indicates that, by the phrase "'coercive acts of unions," Senator Taft intended to encompass such traditional and legitimate union disciplinary measures as a fine for refusing to support a lawful strike called by a majority of the members. On the contrary, in view of the earlier references in the legislative debates to violence, mass picketing, and threats of job loss, it is reasonable to conclude that Senator Taft was referring only to that kind of union conduct.

[17] The amendments finally adopted are in sharp contrast to those proposed in the House bill. H.R. 3020, as it passed the House, made it an unfair labor practice for a labor organization "to fine or discriminate against any member, or subject him to any discipline or penalty, on account of his having" criticized the organization or its officers, supported or failed

C. THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959 CONFIRMS THE LIMITED SCOPE OF SECTION 8(b)(1)(A)

The Labor-Management Reporting and Disclosure Act, enacted in 1959, confirms the foregoing interpretation of the limited scope of Section 8(b)(1)(A).[18] Although the 1959 statute, unlike the Taft-Hartley Act, was explicitly directed at the regulation of internal union affairs and provides a "bill of rights" for union members, Congress recognized (Section 101(a)(5), 29 U.S.C. 411(a)(5)) that a union member "may be fined, suspended, expelled, or otherwise disciplined" provided that certain procedural safeguards are observed. It thereby indicated its own understanding that the 1947 Act had not proscribed the fine as a legitimate method of securing the compliance of members with reasonable union rules. Moreover, Congress added a proviso (Section 101(a)(2), 29 U.S.C. 411(a)(2)) disclaining any intent "* * * to impair the right of a labor organization to adopt and enforce reasonable

---

to support any candidate for civil or union office, or "supported or failed to support any proposition submitted to the labor organization, or to citizens generally, for a vote" (Sec. 8(c)(5), 1 Leg. Hist. 180). Another provision made it an unfair labor practice for a labor organization "to expel or suspend any member without affording him an opportunity to be heard, or on any ground other than (A) nonpayment of dues [and five other grounds]" (Sec. 8(c)(6), 1 Leg. Hist. 181). The Conference Committee rejected these provisions and adopted the Senate bill. H. Conf. Rep. No. 510, 80th Cong., 1st Sess. 42, 44, 1 Leg. Hist. 546, 548.

[18] In *Curtis* (362 U.S. at 291) the Court observed: "To be sure, what Congress did in 1959 does not establish what it meant in 1947. However, as another major step in an evolving pattern of regulation of union conduct, the 1959 Act is a relevant consideration."

rules as to the responsibility of every member toward the organization as an institution * * * ." It is hardly likely that Congress would have adopted these provisions, allowing the enforcement of reasonable union rules, had it flatly interdicted union fines under Section 8(b)(1)(A) 12 years earlier.

III. SECTION 8(b)(1)(A) DOES NOT PROHIBIT A UNION FROM FINING A MEMBER WHO HAS VOLUNTARILY SUBSCRIBED TO UNION OBLIGATIONS FOR REFUSING TO SUPPORT A LAWFUL STRIKE

A. THE UNION'S IMPOSITION OF A FINE, AND JUDICIAL ACTION TO COLLECT IT, IS NOT A FORBIDDEN SANCTION

As we have noted above, the legislative history of Section 8(b)(1)(A) demonstrates a congressional belief that there are some kinds of union pressure to which employees should under no circumstances be subjected—however reasonable or unreasonable the union's objectives. In particular, Congress focused on strong-arm tactics and threats of job loss as impermissible means to any end. We recognize, of course, that the phrase "restraint or coercion" draws only a hazy boundary between the permissible and the impermissible. But a relatively small fine, imposed through a procedure of unquestioned fairness and collected through civil action in a state court, is the very antithesis of the type of tactics Congress intended to prohibit.

Moreover, it is clear that some fines at least are permissible even though they are undoubtedly "coercive" and designedly so. Thus, a union may fine members who violate a no-strike vote or no-strike clause (see, *supra*, p. 13). Of course, even properly

imposed fines can be collected in ways that run afoul of Section 8(b)(1)(A) (see *supra*, p. 8, n. 8). But the collection of fines from recalcitrant members by civil action in no way affects job rights and surely bears no similarity whatever to strong-arm tactics. An otherwise legitimate fine does not become illegal because the union invokes the peaceable, fair and orderly processes of a state court to collect it.[18a]

If the Union had attempted to prevent the defecting members from crossing the picket line by threatening them with physical harm or with a loss in employment benefits (after the strike ended), the Union would have violated Section 8(b)(1)(A).[19] On the other hand, the court of appeals recognized (R. 98) and the Company conceded (Brief in the court of appeals, pp. 26–27) that, under the Act, the Union could expel the offending members. Indeed, the proviso to Section 8(b)(1)(A) so recognizes, since it states that that section "shall not impair the right of a labor organiza-

[18a] See *Auto Workers, Local 756* v. *Woychik*, 5 Wis. 2d 528, 93 N.W. 2d 336; *Master Stevedores' Assn.* v. *Walsh*, 2 Daly 1 (N.Y. 1867).

[19] As shown, Congress intended to protect union members, no less than other employees, from these tactics (*supra*, pp. 25–26). See also *Progressive Mine Workers* v. *National Labor Relations Board*, 187 F. 2d 298 (C.A. 7); *National Labor Relations Board* v. *Bell Aircraft Co.*, 206 F. 2d 235 (C.A. 2); *Painters' District Council No. 6* (*Higbee Co.*), 97 NLRB 654, 660–661, enforced, 202 F. 2d 957 (C.A. 6), certiorari denied, 345 U.S. 995; *Fox Midwest Amusement Corp.*, 98 NLRB 699, 718, 719; *Minneapolis Star and Tribune Co.*, 109 NLRB 727, 728–729; cf. *National Labor Relations Board* v. *Local 169, Teamsters*, 228 F. 2d 425, 430 (C.A. 3).

The Union here made no effort to procure the discharge, or otherwise affect the employment status, of members who refused to pay the fines (*supra*, p. 5). Nor did it threaten those members with physical harm.

tion to prescribe its own rules with respect to the * * * retention of membership therein * * *."

We submit that no rational purpose would be served by permitting expulsion but prohibiting fines. The use of fines as a disciplinary device finds widespread recognition in union constitutions,[20] as well as in Section 101(a)(5) of the Labor-Management Reporting and Disclosure Act (see, *supra*, p. 28). According to one study of union disciplinary proceedings, "the most common form of penalty is the fine."[21] Furthermore, expulsion is commonly regarded as a more severe sanction than a fine. Expulsion will generally entail forfeiture of significant union insurance, pension and welfare benefits, as well as disenfranchisement and exclusion from the councils of the collective bargaining agent.[22] Moreover, a fine, if not paid, is often the basis for expulsion (see the UAW Constitution, p. 4, n. 4, *supra*). Under the circumstances, Congress could not have intended to permit the Union to expel members who refused to respect the picket line, but not to fine them.[23]

---

[20] See Summers, *Disciplinary Procedures of Unions*, 4 Ind. Lab. Rel. Rev. 15, 26.

[21] Summers, *op. cit., supra.*

[22] *Id.*, at 28–29; see Cox, *The Role of Law in Preserving Union Democracy*, 72 Harv. L. Rev. 609, 612, 622–623 (1959).

[23] A congressional intention to permit a union to expel an employee from membership, but not to fine him, may not be inferred from the fact that the proviso speaks only of "rules with respect to the acquisition or retention of membership." The rule that a union member must support a strike called by the union certainly has a bearing on the "retention" of membership, for, as shown above, a fine for violating that rule could serve as a basis for expulsion. In any event, the proviso was merely intended to emphasize that Section 8(b)

B. SECURING MEMBERSHIP COMPLIANCE WITH A STRIKE VOTE IS NOT A FORBIDDEN OBJECTIVE

1. Since the legislative history shows that Congress did not intend to leave the union powerless to protect itself against "a man in the union who betrays the objectives of the union, who violates * * * the constitution * * * or the bylaws of the union" (*supra*, p. 19), surely it intended the union to have some effective means of disciplining members who "betray" the union by failing to join a duly authorized strike and to respect its picket line. To be sure, some union objectives may be wholly beyond a union's legitimate sphere of activity so that even legitimate means may not be used to compel the compliance of members. But, requiring members to observe a prop-

(1)(A) itself was not reaching into the area of internal union affairs; and it only mentions union policies with respect to admission and expulsion because that was the specific problem raised by the proviso's sponsor, Senator Holland.

Nor is there merit to the suggestion of the court below that, since fines "may run into thousands of dollars," they "create a far greater burden on the working man than expulsion from his labor organization or even loss of job" (R. 98). As the record shows that the fines imposed ranged from $20 to $100 (*supra*, p. 4), no issue as to unduly burdensome fines is presented. Similarly without merit is the Company's contention (Brief in Response to Pet. for Cert. 6) that it is not the amount of the fine actually imposed, but the *threat* that a large one could be assessed, which makes a fine more coercive than other forms of union discipline. The efficacy of any particular sanction obviously depends on the individual to whom it is applied—his wealth, his physical courage and so on. Congress did not attempt to distinguish between degrees of compulsion, but between permissible and impermissible modes of compulsion. In any event, where expulsion entails the loss of substantial insurance and other benefits, the coercive impact of that penalty would appear to be at least as severe as that of a large fine.

erly established union picket line, which they have sworn to respect, is not within the forbidden category.[24]

As shown (*supra,* pp. 3–4), the strikes involved here were in furtherance of legitimate economic demands, and they were authorized by the Union's membership in accordance with the procedure specified in the UAW constitution.[25] Moreover, the UAW constitution, which all members promise to abide by in taking the oath of membership (Art. 6, Sec. 2; Art. 43; R. 36, 38), requires a member to "support strike action" taken in accordance with the constitution (Art. 2, Sec. 3; R. 35), and "in every way [to] acquit himself as a loyal and devoted member of the International Union" (Art. 41, Sec. 2).

A union rule requiring members to support a lawful strike authorized in accordance with the union's constitution is not only reasonable, but, indeed, es-

---

[24] Cf. *Local 138, Operating Engineers (Charles S. Skura)*, 148 NLRB 679, and *H. B. Roberts, Business Manager of Local 925, Operating Engineers (Wellman-Lord Engineering, Inc.)*, 148 NLRB 674, enforced, *sub. nom. Roberts* v. *National Labor Relations Board*, 350 F. 2d 427 (C.A.D.C.). In these cases, the Board felt that Section 8(b)(1)(A) *did* bar a union from fining a member for filing unfair labor practice charges with the Board. In the Board's view, a union rule prohibiting the filing of charges with the Board went beyond the area of legitimate internal union affairs—the area which Congress intended to leave subject to traditional union disciplinary measures—and impinged upon the Board's processes—an area which Congress intended to protect against all restraint (see Section 8(a)(4)).

[25] This procedure requires: (1) authorization of a formal strike vote by a majority of the members at a membership meeting; (2) a secret poll of all of the members and approval by two-thirds of those voting; and (3) approval by the International Executive Board (R. 38–41).

sential to the union's very existence. As the Board stated (R. 16): "We cannot conceive of a subject which would be more within its competence, since it involves the loyalty of its members during a time of crisis for the union." And, as the Wisconsin Supreme Court added, in *Local 248, Auto Workers* v. *Wisconsin Employment Relations Board*, 11 Wis. 2d 277, 105 N.W. 2d 271, certiorari denied, 365 U.S. 878:

> A union without power to enforce solidarity among its members, when it resorts to a strike in an effort to force an employer to agree to its collective-bargaining demands, is a much-less-effective instrument of collective bargaining than a union which possesses such power. Therefore, there is an intimate connection between the right of a union to fine members, who cross a picket line in order to continue to work during a strike called by the union, and the incidents of collective bargaining sought to be regulated by the Labor-Management Relations Act * * *. [11 Wis. 2d at 288.] [26]

Furthermore, maintenance of union discipline under these circumstances is vital to the union's effectiveness as an instrument of collective bargaining. Industrial peace, which is a primary objective of the labor law, would hardly be served if unions could not discipline members who engaged in wildcat strikes. Yet neither

---

[26] And note Summers, *Legal Limitations on Union Discipline*, 64 Harv. L. Rev. 1049 (1951): "The power to fine or expel strike breakers is essential if the union is to be an effective bargaining agent * * *." See also *id.* at 1066–1067; *Disciplinary Powers And Procedures in Union Constitutions*, U.S. Dept. of Labor, Bur. Lab. Statistics, Bulletin No. 1350 (1963), 31–32.

logic nor the statutory language suggests any basis for distinguishing the minority's right to strike when the majority votes to work from the minority's right to work when the majority votes to strike. As Chief Judge Hastings observed in dissent below (R. 105–106): "I fail to see any congressional purpose to distinguish between wildcat strikers and strikebreakers. The activities of each are equally abhorent to the establishment of industrial peace through the orderly processes of collective bargaining." In both situations the union must have the right to take reasonable action to compel observance of the majority's decision.

2. Moreover, the Union's action did not violate Section 8(b)(1)(A) for the additional reason that the members who were fined were not deprived of any right protected by Section 7 of the Act. Although Section 7 gives employees the right either to join and assist a union or refrain from such activity, an employee who elects to become a union member, like anyone else who joins a voluntary association, must be deemed to have accepted the legitimate rules and policies of the union (see R. 59, 61). The UAW constitution puts an employee who becomes a formal member of the Union on notice that he is expected to support a lawful strike called by the Union, and that he is subject to fine, suspension, or expulsion if he does not (see p. 4 and n. 4, *supra*). Since requiring union members to support a lawful strike is a legitimate union rule, and the penalties provided for its infraction were likewise permissible, the Company's employees, by joining the Union, in effect waived whatever

protection Section 7 would otherwise afford them against fines, suspension, or expulsion if they refrain from strike activity.[27] As Judge Swygert pointed out in his dissent (R. 122–123), "to read Section 7 as saying that an employee who is also a union member may make an independent, *ad hoc* determination to cross a union-imposed picket line without subjecting himself to reasonable internal discipline is to say that an employee-member may simultaneously engage in protected activity and refrain from so engaging."

The court below found support for its decision in the possibility that under the union security clause in the Union's contract "a substantial minority of the employees *may* have been forced into membership" (R. 102; emphasis added). That speculation is without basis. It is undisputed that the union security provision required an employee to become a union member only "to the extent of paying his monthly dues and initiation fees, if any" (see *supra*, p. 3). Consistent with Section 8(a)(3) of the Act, no more than a dues paying status could be required of the employees,[28] and nothing in the record suggests that any further obligation was imposed in fact. On the contrary, the Union pointed out (Intervenor's Memorandum of Response to Petition for Rehearing, p. 3),

---

[27] The employees, of course, cannot be deemed to have waived their right to be free of violence or threat of job loss, because Congress has indicated that these are not permissible means for enforcing union rules.

[28] See *Union Starch & Ref. Co.* v. *National Labor Relations Board*, 186 F. 2d 1008 (C.A. 7), certiorari denied, 342 U.S. 815. Cf. *National Labor Relations Board* v. *General Motors Corp.*, 373 U.S. 734.

and the Company did not dispute (Reply Brief for Petitioner on Rehearing *En Banc*, p. 12):

> Since the only obligation that the Union agreement with the Company imposes is the payment of monthly dues, no worker is required to take the oath and subject himself to the requirements of obedience to the common cause * * *.

Furthermore, in the one action brought by the Union to collect a fine that has gone to trial (*Local 248, UAW* v. *Natzke*),[29] the decision of the Wisconsin Circuit Court, upholding the Union's claim, points out that the defendant there was not merely a member to the extent of paying dues and fees. He had been initiated into the union, had taken the oath, had attended union meetings, had cast a ballot in the strike vote itself, and had refrained from working during the first two weeks of the strike. So far as appears, Natzke may have voted in favor of the strike. Nothing in the record in this case shows that the other recalcitrant members were less active participants in union affairs than Natzke (see R. 59, 61). Nor did any of the members who were fined resign their union membership as a result of the fines (*supra*, p. 5).

It appears therefore that, contrary to the court's assumption, each employee had a free choice either (1) to refrain from all union activities except payment of the required dues and fees, or (2) to adhere to the union, take the prescribed oath of fidelity, participate in the union's affairs, and abide by the union's rules and decisions.

---

[29] The opinion of the Circuit Court for Milwaukee County, Wisconsin, in *Local 248, UAW* v. *Benjamin Natzke*, No. 313–673 (March 3, 1964), is unreported. It is set forth in Appendix B, *infra*.

In sum, the Board properly concluded that the Union did not violate Section 8(b)(1)(A) of the Act by fining those of its members who refused to adhere to a strike duly authorized by the membership, nor by attempting to collect such fines through court action.

CONCLUSION

The judgment of the court below setting aside the Board's dismissal of the complaint should be reversed.

Respectfully submitted.

THURGOOD MARSHALL,
Solicitor General.
ROBERT S. RIFKIND,
Assistant to the Solicitor General.

ARNOLD ORDMAN,
General Counsel,
DOMINICK L. MANOLI,
Associate General Counsel,
NORTON J. COME,
Assistant General Counsel,
National Labor Relations Board.

DECEMBER 1966.

APPENDIX A

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. Sec. 151, *et seq.*) in addition to those set forth *supra*, pp. 2–3, are as follows:

Sec. 8.(a) It shall be an unfair labor practice for an employer—

* * * * * *

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided,* That nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8 (a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 9(a), in the appropriate collective-bargaining unit covered by such agreement when made, and (ii) unless following an election held as provided in section 9(e) within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement: *Provided further,* That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same

terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

(4) to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act;

* * * * *

(b) It shall be an unfair labor practice for a labor organization or its agents—

* * * * *

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

* * * * *

Sec. 13. Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right.

APPENDIX B

Decision of Circuit Court for Milwaukee County, Wisconsin, March 3, 1964, in *Local 248, UAW* v. *Benjamin Natzke,* No. 313–673.

This is an appeal from a judgment of the County Court, Civil Division, of Milwaukee County in favor of plaintiff, Local 248, UAW, and against defendant, Benjamin Natzke, entered on the 21st day of May, 1963, in the amount of $153.88, the Hon. Edwin C. Dahlberg, County Judge, presiding.

The action was brought to enforce the collection of a fine levied by the plaintiff union against the defendant, one of its members.

The defendant is a long-time employe of the Allis-Chalmers Manufacturing Company, having entered such employment in April, 1947. The plaintiff union represented production and maintenance employes at the West Allis plant for a long period of time. The defendant had no relationship with the plaintiff union until the effective date of the labor agreement referred to as Exhibit No. 1 (September 3, 1955). At that time the defendant signed a check-off authorization pursuant to the so-called "Union Shop Agreement." The defendant on August 3, 1958, cast a ballot on a so-called "Strike Vote" taken by the union. The defendant also attended a meeting of the membership on February 2, 1959, at the Milwaukee Auditorium.

While a strike was in progress, the defendant stayed away from work for a period of about two weeks and then returned to work while the strike was

still in progress. Later charges were filed against him by other members of the union alleging that he engaged in conduct unbecoming a union member. The defendant was notified of the charges against him and was furnished a copy of them.

A trial committee was selected and on July 7, 1959, a hearing was held. The defendant was represented by counsel and participated in the proceedings. The defendant was found guilty of the charge of conduct unbecoming a union member and a fine of $100 was assessed against him. The finding and penalty were ratified by the union membership, the defendant was notified of the action of the membership, and demand was made upon him for payment of the $100 fine. The defendant attempted to appeal to the International Union but the appeal was declined because the fine had not been previously paid.

The parties stipulated that the defendant was notified that charges had been filed against him and was given a copy, the charges being he was guilty of conduct unbecoming a union member; that on the 7th day of July, 1959, following the selection of a trial committee pursuant to the constitution, the first hearing was held; that defendant appeared by counsel and participated in the proceedings being held before the trial committee of the local union; that in the course of the testimony counsel for defendant argued his position in favor of a dismissal of the charges and the trial committee took the matter under advisement; that on September 12, 1959, the trial committee submitted its findings, decision and judgment to the membership of the local union; that the membership approved the finding of guilty and the penalty of $100; that the defendant was notified of the results of the action of the membership.

The trial court in its memorandum decision found that the defendant was a long-time employe of the Allis-Chalmers Manufacturing Company; that prior to 1955 the defendant had no relationship with the plaintiff union; that in 1955 the union entered into an agreement with the company which agreement, among other things, provided for what is commonly referred to as a "Union Shop Agreement"; that defendant subsequent to the signing of the "Union Shop Agreement" signed a check-off card and in this manner provided for the payment of his initiation fee and for periodic payment of union dues; that defendant was initiated into the union and took an oath of membership; that he attended two meetings and by his actions became a member of the union for all purposes;

That the defendant returned to work during the strike; that charges were filed against him by other members of the union alleging that he engaged in conduct unbecoming a union member; that there is no evidence that would establish that it was impossible or unreasonable or overly burdensome for defendant to first pay the fine imposed by the trial committee tribunal as a condition of appeal; that defendant failed to exhaust the remedies available to him within the union; that defendant had not brought himself within an exception to the exhaustion of remedies rule; that the fine had been duly imposed and not paid; that no proper appeal had been taken within the union.

Defendant Natzke's first contention, that no contractual relationship is established between a local union and a member who joins involuntarily by reason of a "union shop" or maintenance of membership agreement, cannot be sustained under the evidence adduced.

The trial court made a finding that defendant Natzke became a member of the union for all purposes and there is evidence to support that finding. The defendant signed the check-off authorization pursuant to the so-called "union shop" agreement. There was testimony of his initiation as a member and his attendance at a strike vote meeting on August 13, 1958, and also his attendance at a membership meeting on February 2, 1959, held in the Milwaukee Auditorium.

The further argument that defendant could not by his actions waive a substantial statutory right, namely, the right provided by subsection 7 of the Federal Act to abstain from any and all union activity, cannot be sustained in view of the defendant's activity and the provision of subsection 7 of the Labor Management Relations Act, which provides:

> ". . . except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in sec. 158 (a)(2)."

As the trial court stated:

> "Having taken advantage of the prerogatives of Union membership he has assumed all of the duties of membership."

Having become a member of the union for all purposes, defendant was subject to such of its rules which are nondiscriminatory and provide for forfeitures in case of violation.

Defendant also contends that the offense with which he was charged is not prescribed with any degree of definiteness and certainty as required by law. This contention cannot be sustained. The defendant was specifically charged with conduct unbecom-

ing a member. He testified that he had a trial before the union trial committee on July 22, 1959, and was advised that the charge was made because he went back to work during a strike. He also admitted receiving a notification in the form of a warning. The specific charge of conduct unbecoming a member is provided for in Article 30 of the International Union's Constitution and apparently is a specific charge that covers a multitude of offenses.

Defendant also contends that he has a right to assert as an affirmative defense a pre-existing breach of the same contract by the plaintiff in a respect relevant to the controversy.

In effect, defendant asserts that the strike called by the plaintiff union was tainted with irregularity. The evidence does not support that allegation. The evidence shows that at a preliminary membership meeting in July, 1958, the terms of a new contract were discussed, that a secret ballot for a strike authorization was taken on August 13, 1958, that at a special meeting called for that purpose a majority of the membership authorized the labor union to call a strike at such time as the executive board found it necessary.

The trial court made a finding that the defendant in this matter had failed to exhaust the remedies available to him within the union. The defendant contends that the conditions imposed by the constitution of the International Union as a pre-requisite to appeal are burdensome and oppressive in respect to advance payment of the fine and in respect to the lengthy delay in time of processing such an appeal.

The Court is of the opinion that the requirement of payment of the fine as a pre-requisite to appeal is not unreasonable or burdensome.

Defendant's next contention is that the levy of a fine of $100 against the defendant for continuing to work during a strike called by the plaintiff is an act of coercion on the part of the plaintiff and violates the provisions of section 8(b)(1)(A) of the National Labor Relations Act as well as section 111.06(2)(a) of the Wisconsin Employment Peace Act.

The Court is of the opinion that the instant situation is governed by the recent decisions of the National Labor Relations Board in the case of *United Automobile, Aircraft and Agricultural Implement Workers of America, UAW Local 283, Wisconsin Motor Corp., AFL-CIO and Russell Seofield, an Individual, et al. 145 NLRB No. 109, Cases Nos. 13-CB-1059-1, 1059-2, 1059-3, and 1059-4. (January 17, 1964)*, and the case of *Local 248, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO and Allis Chalmers Manufacturing Company, Case No. 13-CB-1066 (January 31, 1964)*.

These cases involved the infraction of an International Union rule and in all cases the union restricted the enforcement of its rule to an area involving the status of a member as a member rather than as an employe. Clearly under the above rulings the plaintiff union has not engaged in an unfair labor practice within the meaning of section 8(b)(1)(A) of the National Labor Relation Acts or section 111.06(2)(a) of the Wisconsin Statutes.

Defendant also contends that the assessment of a fine violates the express right granted to the defendant by section 7 of the National Labor Management Relations Act, which provides:

> "Employes shall have the right to self-organization, to form, join, or assist labor or-

> ganizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3)."

The above section gives employes the right to refrain from any or all of the activities above mentioned except to the extent that such right may be affected by a "closed shop" agreement and also by the extent to which an employe joins a union. In this case the defendant was found to be a full member of the union for all purposes and, therefore, there was no express right of the defendant violated.

As was stated in *Local 248, U.A.A. & A.I.W.* v. *Wis. E.R. Board, 11 Wis. (2d) 277, 288:*

> "A union without power to enforce solidarity among its members, when it resorts to a strike in an effort to force an employer to agree to its collective-bargaining demands, is a much-less-effective instrument of collective bargaining than a union which possesses such power."
>
> "'A union must have authority to discipline its members, otherwise it will have no power to bargain effectively.'"
>
> *Sanders* v. *International Association of Bridge, Structural & Ornamental Iron Workers, et al. 235 F. 2d 271-272.*

The defendant lastly contends that the state courts are without jurisdiction in this matter.

In support of this contention defendant cites the case *Local 248, U.A.A.&A.I.W.* v. *Wis. R. R. Board,* supra, in which the Wisconsin Supreme Court held

that the W.E.R.B. had no jurisdiction to review the action of the union in fining members who crossed a picket line to work during a strike. Defendant further contends that the trial court reached a correct conclusion on the question of pre-emption but erroneously asserted jurisdiction.

This Court is of the opinion that the question of preemption is not involved in the action at bar and that the above-cited case of Local 248 v. W.E.R.B. only establishes a rule that the Wisconsin Employment Relations Board has no power or jurisdiction to interfere in the internal affairs of a union which is the certified representative of the employes of a company engaged in interstate commerce.

The present case involves questions relating to the internal affairs of a labor union and its disciplinary power over its members under the union's constitution and by-laws which constitute a contract between the union and its members.

United Automobile, A.&A.I. Workers v. *Movchik, 5 Wis. (2d) 528.*

This is an action for the collection of a penalty or forfeiture for violating a rule or by-law of the union. There was a breach of the contract governing relations between the union member and the union.

International Assn. of Machinists v. *Gonzales, 356 U.S. 617.*

The County Court, Civil Division, of Milwaukee County had jurisdiction to determine the issues under our local law of contracts and to provide relief in the nature of a fine or forfeiture as damages.

The Court being of the opinion that the material findings of fact made by the trial court are supported by the evidence, and the Court being of the opinion

that the County Court, Civil Division, of Milwaukee County had jurisdiction over the subject matter, the judgment of the County Court, Civil Division, of Milwaukee County entered on the 21st day of May, 1963, is hereby affirmed.

U.S. GOVERNMENT PRINTING OFFICE: 1966